

DOUGLAS COUNTY GRIEVANCE PROCEDURE

POLICY: To provide a timely and orderly review of decisions, as required by Wis. Stat. § 66.0509, concerning: a) employee terminations; b) employee discipline; and c) workplace safety.

I. Purpose and Applicability

This procedure provides an employee with the individual opportunity to address concerns regarding discipline, termination or workplace safety matters, to have those matters reviewed by an Impartial Hearing Officer and to appeal to the County Board, where appropriate. The County expects employees and management to exercise reasonable efforts to resolve any questions, problems, or misunderstandings prior to utilizing the Grievance Procedure.

If an employee is subject to a contractual grievance procedure, the contractual grievance procedure must be followed as applicable. If an employee is subject to Douglas County's civil service system, the civil service system shall supersede this procedure where applicable.

Further, this procedure does not replace or supersede any statutory provision which may be applicable to an employee's employment with the County.

This Grievance Procedure does not create a legally binding contract or a contract of employment.

II. Definitions

Definition of "Discipline": For purposes of this procedure, "discipline" means an employment action that results in disciplinary suspension and/or disciplinary demotion/reduction in rank. "Discipline" does not include any written or verbal notices, warnings, or reminders; verbal discipline will be documented, but not subject to the grievance procedure. The purpose of written and verbal notices, warnings, or reminders is to alert the employee that failure to correct the behavior may result in disciplinary suspension, termination, or disciplinary demotion/reduction in rank.

Definition of "Employee" for Purposes of Discipline and Termination Grievances: For purposes of the Procedure for Grievances Concerning Employees Terminations and Employee Discipline, "employee" includes all regular full-time and part-time employees who have been employed for (1) one year or more. The term "employee" excludes elected officials; individuals hired on a limited term, temporary, casual or seasonal basis; independent contractors; and any individual, official or officer that serves at the pleasure of the appointing authority as provided by Wisconsin Statutes.

Definition of “Employee” for Purposes of Workplace Safety Grievances: For purposes of the Procedure for Grievances Concerning Workplace Safety, “employee” shall include all regular full-time and part-time employees, elected officials; and, individuals hired on a limited term, casual, or seasonal basis. The term “employee” excludes independent contractors.

Definition of “Termination”: For purposes of this procedure, “termination” means a separation from employment by the employer for disciplinary and/or performance reasons. “Termination” does not include layoff, furlough or reduction in workforce, reduction in hours, job transfer or reassignment, or retirement.

Definition of “Workplace Safety”: For purposes of this procedure, “workplace safety” includes any conditions of employment related to the physical health and safety of employees, including the safety of the physical work environment, the safe operation of workplace equipment and tools, provision of personal protective equipment, and accident risks. “Workplace Safety” does not include conditions of employment unrelated to physical health and safety matters, including, but not limited to, hours, overtime, sick, family, or medical leave, work schedules, breaks, termination, vacation, performance reviews and compensation.

III. General Provisions:

Role and Appointment of “Impartial Hearing Officer”: For purposes of this policy, the role of the “Impartial Hearing Officer” will be to define the issues, identifying areas of agreement between the parties and identifying the issues in dispute, and to hear the parties’ respective arguments.

The Impartial Hearing Officer may require the parties to submit documents and witness lists in advance of the hearing in order to expedite the hearing. The Impartial Hearing Officer will have the authority to administer oaths, issue subpoenas at the request of either party, and decide if a transcript is necessary. The Impartial Hearing Officer shall apply relaxed standards for the admission of evidence and may allow or request oral or written arguments and replies.

Following receipt of the appeal requesting a hearing before an Impartial Hearing Officer, the Corporation Counsel Office shall provide a list of three names of persons available to serve as an Impartial Hearing Officer. The County Administrator and Grievant shall select a name from the list. If the parties cannot mutually agree on an Impartial Hearing Officer from the list, then the parties shall strike names from the list with the parties flipping a coin as to who strikes the first name. The remaining name shall be selected and assigned as the Impartial Hearing Officer.

Costs: Each party shall bear its own costs for witnesses and all other out-of-pocket expenses, including possible attorney fees, in investigating, preparing, presenting, or defending a grievance. The fees of the Impartial Hearing Officer will be paid by the County.

Time Limits: The term “days” as used in this provision means calendar days, excluding holidays. The employer and grievant may mutually agree to extend time limits, in writing. If the

last day on which a grievance is to be filed or a decision is to be appealed is a Saturday, Sunday or holiday, the time limit is the next day which is not a Saturday, Sunday or holiday.

A grievance or decision or appeal is considered timely if received by the employer during normal business hours or if postmarked by 12:00 midnight on the due date.

The employer and grievant may mutually agree, in writing, to waive any step to facilitate or expedite resolution of the grievance.

If the grievance is not answered within the time limits, the grievant may proceed to the next available step within (10) ten days.

Any issues involving the timeliness of a grievance shall be resolved by the County Administrator.

Scheduling: Grievance meetings and hearings will typically be held during the grievant's off-duty hours. Time spent in grievance meetings and hearing outside of normal business hours shall not be considered as compensable work time.

Representation: The grievant shall have the right to representation during the Grievance Procedure at the Grievant's expense.

IV. Procedure for Grievances Concerning Employee Terminations and Employee Discipline:

Step 1: An earnest effort shall be made to settle the matter informally between the aggrieved employee and the employee's immediate supervisor. If the grievance is not resolved informally, it shall be reduced to writing by the employee who shall submit it to the employee's Department Manager, with a copy to the Human Resources Representative.

The written grievance shall give a detailed statement concerning the subject of the grievance, the facts upon which the grievance is based, and indicate the specific relief being sought.

Time Limit: If the employee does not submit a written grievance within 10 ten days after the facts upon which the grievance is based first became known, or should have been known to the employee, the grievance will be deemed waived. The Department Manager will reply in writing to the employee within (10) ten days after receipt of the written grievance.

Step 2: If the grievance is not settled in Step 1, and the employee wishes to appeal the decision, the employee shall submit the written grievance to the County Administrator to request a hearing before an Impartial Hearing Officer.

Time Limit: If the employee does not submit a written grievance to the County Administrator requesting a hearing before an Impartial Hearing Officer within (10) ten days after receipt of the Department Manager's decision, the grievance will be deemed waived. If timely requested, the hearing will normally be scheduled within 30 days of receipt of the request for hearing.

The Impartial Hearing Officer shall determine whether the Department Manager's decision was arbitrary, capricious or not supported by the facts. At the conclusion of the hearing, the Impartial Hearing Officer shall render a written decision indicating the reasons for one of four decisions:

- 1) Sustaining the discipline/termination;
- 2) Modifying the discipline/termination;
- 3) Denying the discipline/ termination; or
- 4) Recommending additional investigation prior to final determination.

In cases where the Impartial Hearing Officer recommends additional investigation, at the conclusion of the additional investigation, a second, follow-up hearing shall be scheduled.

The Impartial Hearing Officer shall render a written decision to the employer and employee within (30) thirty calendar days from the date of the hearing.

Step 3: The employer or employee may appeal the decision of the Impartial Hearing Officer to the County Board. The decision of the governing body shall be final and binding upon the parties.

Time Limit: The employee or employer may request a review by the County Board by filing a request with the County Administrator within (10) ten days of receipt of the written decision of the Impartial Hearing Officer. The request must set forth in detail the reasons for the appeal. The non-appealing party shall have (10) ten days to submit a reply to the detailed request. Once the written request and reply are received by the County Clerk, the review will be scheduled on the agenda for the first County Board meeting that is held at least 10 days after said request and reply are received or at a special meeting if such is deemed necessary by the County Board. If not timely submitted by the grievant, the grievance can no longer be addressed in the grievance procedure.

Level of Review: The County Board shall review the record and determine whether a rational basis exists for the Impartial Hearing Officer's decision. The findings of fact of the Impartial Hearing Officer shall not be overturned unless clearly erroneous. In the event the County Board does not sustain the Impartial Hearing Officer's decision, then the County Board may render a new decision and remedy, request the Impartial Hearing Officer to take further evidence, assign an

Impartial Hearing Officer to create a recommendation for the County Board's review, or hold a new hearing and make an independent decision.

V. Procedure for Grievances Concerning Employee Workplace Safety:

Step 1: Any employee who personally identifies, or is given information about, a workplace safety issue or incident must notify his/her supervisor of the issue or incident as soon as reasonably practicable. All safety issues, no matter how insignificant the situation may appear to be, must be reported. If the matter is not resolved in this manner, the employee shall report the incident or issue to the employee's Department Manager and file a written report of the incident or issue.

Time Limit: In order to be addressed as part of the grievance procedure, any workplace safety incident or issue must be reported by an employee within 24 hours after the incident or issue was raised. The 24 hour time limit for reporting may be waived by mutual agreement of the employer and employee.

A written report of the incident or issue, outlining the events that transpired and proposed resolution, if any, shall be signed by the employee and submitted to the employee's Department Manager within 10 days of the incident or issue for review and consideration.

Step 2: After receipt of the written report, the Department Manager will conduct an investigation, if required, and will reply to the employee in writing within 10 days of receipt of the written report. Copies of the Department Manager's final report will be given to the County Administrator.

Step 3: The employee may appeal the decision of the Department Manager and request a hearing before an Impartial Hearing Officer.

Time Limit: If the employee does not submit a written grievance to the County Administrator requesting a hearing before an Impartial Hearing Officer within 10 days after receipt of the Department Manager's written decision, the grievance can no longer be addressed in the grievance procedure. If timely requested, the hearing will normally be scheduled within 10 days of receipt of the request for hearing.

The Impartial Hearing Officer shall render a decision as to one of three outcomes:

- 1) Sustaining the conclusions of the Department Manager;
- 2) Denying the conclusions of the Department Manager and ordering additional or alternative remedial measures; or
- 3) Recommending additional investigation prior to final determination. In cases where the Impartial Hearing Officer

recommends additional investigation, at the conclusion of the additional investigation, a second, follow-up hearing shall be scheduled.

The Impartial Hearing Officer shall render a written decision setting forth the reasons for his/her decision within 30 calendar days from the date of the hearing.

Step 4: Any order for additional or alternative remedial measures must be submitted to the Administration Committee for approval prior to implementation. The employer or employee may appeal the decision of the Impartial Hearing Officer, or the Administration Committee, if applicable, to the County Board. The decision of the governing body shall be final and binding upon the parties.

Time Limit: If additional or alternative remedial measures are ordered, the Administration Committee shall meet within 30 days to consider the order and render a written opinion.

The employee or employer may request a review by the County Board by filing a request with Human Resources within 10 days of receipt of the written decision of the Impartial Hearing Officer, or the Administration Committee, as applicable. The request must set forth in detail the reasons for the appeal. The non-appealing party shall have 10 days to submit a reply to the detailed request. Once the written request and reply are received by the County Clerk, the review will be scheduled on the agenda for the first County Board meeting that is held at least 10 days after said request and reply are received or at a special meeting if such is deemed necessary by the County Board. If not timely submitted by the grievant, the grievance can no longer be addressed in the grievance procedure.

Level of Review: The County Board shall review the record and determine whether a rational basis exists for the Impartial Hearing Officer's decision. The findings of fact of the Impartial Hearing Officer shall not be overturned unless clearly erroneous. In the event the County Board does not sustain the Impartial Hearing Officer's decision, then the County Board may render a new decision and remedy, request the Impartial Hearing Officer to take further evidence, assign an Impartial Hearing Officer to create a recommendation for the County Board's review, or hold a new hearing and make an independent decision.

*Approved by the County Board: September 15, 2011
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